

ADVISORY OPINION REQUEST

Number: AO 13-03-CD
Requested By: Renee M. Limoge, We Are Alaska
Prepared By: Thomas R. Lucas, Associate Attorney II
Date Issued: May 16, 2013
Subject: Reporting requirements of a group opposing a referendum application
Commission Decision **On June 6, 2013, the Alaska Public Offices Commission heard and approved this advisory opinion request by a vote of 5 to 0.**

QUESTIONS PRESENTED

1. Is a pre-existing registered independent expenditure group which desires to accept donations and expend funds in opposition to a referendum application filed with the Lieutenant Governor required to file any APOC campaign disclosure reports in connection with those activities?
2. Is an individual who is required to register as a lobbyist precluded from serving as the Chair of an independent expenditure group?

SHORT ANSWERS

1. No. AS 15.13 contains no requirement to report donations received or money spent to oppose a referendum application (the signature phase).
2. No. AS 24.45 does not prohibit a person required to register as a lobbyist from serving as the Chair of an independent expenditure group.

FACTS

A. OPPOSITION TO REFERENDUM APPLICATION

On April 18, 2013 a referendum application regarding Senate Bill 21 (oil tax) was filed with the Lieutenant Governor. The primary Sponsors were Victor Fisher, Bella Hammond and N. Jim Whitaker Jr. The application was certified on April 25, 2013 and Petition Booklets were issued on April 30, 2013. The sponsors and their group "Repeal the Giveaway" have until July 13, 2013 to gather the necessary signatures to get the referendum on the August, 2014 ballot.

The Requester, "We Are Alaska", is a pre-existing independent expenditure group which is opposing the signature drive by encouraging people to consider the ramifications of signing the petition.

B. LOBBYIST AS CHAIRPERSON

Rebecca Logan is the Chair of "We Are Alaska". This year she was required to register as a lobbyist.

BACKGROUND

A. THE BALLOT PROCESS.

Under Alaska law, Alaska citizens can either repeal existing laws or create new laws by placing a question on the ballot. This is called the ballot process. A *referendum* is where the citizens vote whether to repeal an existing law. An *initiative* is where citizens vote whether to create a new law. The process is roughly the same for referendums and initiatives.

Both initiatives and referendums start by the filing of an application with the Lieutenant Governor.¹ The application must include the signatures of qualified voters who will serve as sponsors.² The Lieutenant Governor certifies the referendum or initiative and then the Lieutenant Governor prepares petitions for circulation by the sponsoring group.³ The sponsoring group then must obtain a certain amount of signatures from each voting district in order to have their question certified and placed on the ballot. This process is referred to as “signature gathering” and the sponsoring group solicits donations and expends money to obtain the signatures. If the sponsoring group is successful in its endeavors, the Lieutenant Governor prepares a ballot title and the referendum becomes a ballot proposition.⁴

B. AFTER 2010 LAW CHANGES, CAMPAIGN FINANCE REPORTING DIFFERS BETWEEN REFERENDUMS AND INITIATIVES DURING SIGNATURE GATHERING.

Since 1981, this Commission has taken the position that donations received and money spent solely for the purpose of collecting signatures are not reportable “contributions” or “expenditures” and are not, therefore required to be reported under the Campaign Disclosure Law.⁵

In 2010, the Legislature added subsection 15.13.110(g) to campaign finance laws. The new legislation requires groups that support or oppose an *initiative* application during the signature gathering phase to report contributions and expenditures. The new law does not require those that support or oppose a referendum application to report donations and purchases related to signature gathering.⁶

The reports required of “a group formed to sponsor a referendum or a recall...” are set forth at AS 15.13.110(e). Pursuant to the statute, each such group must report its contributions received and expenditures made, 30 days after its first filing with the Lieutenant Governor and within 10 days after the end of each calendar quarter thereafter until reports are due under AS 15.13.110(a).⁷ The statute is silent concerning any reporting requirements of groups that oppose a referendum application.

¹ AS 15.45.260

² AS 15.45.270

³ AS 15.45.320

⁴ AS 15.45.410

⁵ Exhibit 1; 1985 Commission approved Advisory Letter.

⁶ AS 15.13.400(4)(A)(iii) and (6)(A)(v)

⁷ These would include the 30-day, 7-day and year-end reports of the usual state election cycle.

ANALYSIS

A. REPORTS REQUIRED

Unlike groups supporting or opposing an initiative petition; or a group formed to sponsor a referendum or recall; “We Are Alaska”, a group opposing a referendum application, is not required to file any quarterly reports. As a pre-existing independent expenditure group that has chosen to participate in no elections during calendar year 2013, the next report required of “We Are Alaska”, will be its 2013 year-end report due on February 15, 2014.

B. ACTIVITY TO REPORT

A group is required to report all “contributions” and “expenditures”.⁸ But, income received solely to oppose a referendum application is not a “contribution” as that term is defined in the statute because it is not received for the purpose of influencing the nomination or election of a candidate; influencing a ballot proposition or question; or supporting or opposing an initiative proposal application filed with the Lieutenant Governor.⁹ Likewise, money spent solely to oppose a referendum application is not an “expenditure” as that term is defined in the statute because it is not made for the purpose of influencing the nomination or election of a candidate; influencing the outcome of a ballot proposition; or supporting or opposing an initiative proposal application filed with the Lieutenant Governor.¹⁰

Accordingly, “We Are Alaska” is not required to report on its 2013 year-end report income received solely to oppose the referendum application; nor money spent solely to oppose the referendum application. “We Are Alaska” will be required to report any contributions received and expenditures made to oppose the referendum once it is certified for the ballot and becomes a proposition.

“We Are Alaska” must be mindful that precertification donations and purchases are reportable to APOC as contributions and expenditures if the donations or purchases are actually made to influence the outcome of the potential ballot proposition, even if the donation or purchase is made during the signature gathering stage.¹¹

C. LOBBYIST AS CHAIRPERSON

A lobbyist may not serve as a campaign manager or director, serve as a campaign treasurer or deputy campaign treasurer on a finance or fund-raising committee, host a fund-raising event, directly or indirectly collect contributions for, or deliver contributions to, *a candidate*, or otherwise engage in the fund-raising activity of a *legislative campaign or campaign for governor or lieutenant governor* if the

⁸ AS 15.13.040

⁹ AS 15.13.400(4)

¹⁰ AS 15.13.400(6)

¹¹ See, for example, Hackney v. AAMS, CAP, NANA Case no. 09-07-CD.

lobbyist has registered, or is required to register, as a lobbyist under this chapter, during the calendar year.¹²

A lobbyist may not serve the campaign of a candidate for governor, lieutenant governor or the legislator in any capacity in which the lobbyist has final decision making authority or day-to-day control over the campaign or the campaign's fundraising; is authorized to receive, hold, or disburse campaign funds or goods; is an officer of a controlled group or serves in a fundraising capacity for an event from which more than 50% of the proceeds are intended for a single candidate or campaign; or solicit, collect, accept or deliver campaign funds or goods.¹³

An independent expenditure group is, by its very nature, completely independent of any candidate's campaign: its expenditures, and by extension, its fundraising, must be made without the direct or indirect consultation or cooperation with, or at the suggestion or request of a candidate.¹⁴

Accordingly, Staff concludes that Ms. Logan may serve as Chair of "We Are Alaska" without violating AS 24I45 or AS 15.13.

CONCLUSION

"We Are Alaska" is not required to file quarterly reports. "We Are Alaska is not required to report income received or money spent solely to oppose the referendum during the signature phase of the ballot process.

Ms. Logan may serve as Chair of the independent expenditure group, "We Are Alaska".

COMMISSION DECISION

Only the Commission has the authority to approve an advisory opinion. 2 AAC 50.840. The Commission will rule on staff's proposed advice at its next regular meeting. The Commission may approve, disapprove, or modify the proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff's proposed advice and the Commission's final advisory opinion apply only to the specific facts and activity for which advice was requested.

If you rely on staff's proposed advisory opinion in good faith and the Commission subsequently rejects the proposed advice, staff will take no enforcement action on your activities up to that point if you acted under the specific facts described. If you have any additional questions or would like to discuss this proposed advice, please contact me at (907) 276-4176.

¹² AS 24.45.121(a)(8)

¹³ 2 AAC 50.580

¹⁴ AS 15.13.400(10)